IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

CONTEMPT PETITION NO.114 OF 2007
IN
WRIT PETITION NO.2481 OF 2005

M/s. Earthworth Construction Pvt. Ltd. ..Petitioner.
Vs.
Dilip Kisan Kamat and others ..Respondents.

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Mr. P.K. Dhakephalkar, Senior Advocate with Mr. P.C. Kansara i/b M/s. Pandya & Poonawala for the Petitioner.
Mr. V.M. Singh i/b Mr. N.R. Gandhi for Respondent No.1.
Mr. J.G. Reddy for Respondent Nos.3 and 4.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

17th December, 2007.

P.C. :

1. The First Respondent was a party to a writ petition filed under Article 226 of the Constitution before a Division Bench of this Court (Writ Petition 2481 of 2005) challenging a scheme of redevelopment on a plot of land bearing CTS 610(Part) at Saibaba Nagar, Ali Yavar Jung Marg, Bandra (E), Mumbai 400 051. Consent Terms were arrived at in the writ petition and the Division Bench by an order dated 18th October, 2006 disposed of the Petition in terms of Consent Terms. The Consent Terms were signed by 37 out of 78 Petitioners before the Court and by the

learned advocates appearing on behalf of the Petitioners on the one hand and by the respective Respondents on the other. Respondents 1 to 3, 6 and 7 viz. the authorities of the State and the Slum Rehabilitation Authority were not parties to the Consent Terms. The undertakings contained in Clause 5 of the Consent Terms were accepted by the Division Bench. Under Clause 5, the Consent Terms contained the following undertaking :

> "All the Petitioners undertake to vacate the Slum Plot and Eligible Members will shift to Transit/Temporary Accommodation on or before 1st January, 2007 against receipt of the advance compensation in respect of the temporary Leave and License accommodation and post dated cheques as stated in Clause 6 herein, which transit/temporary accommodation shall be arranged for by the Petitioners themselves. The Respondent No.5 will pay compensation as per Clause 6 hereinafter on or before 17th October, 2006 by way of depositing the said cheques with Advocates for the Petitioners (viz. Mrs. Shakuntala A. Mudbidri). The Petitioners undertake to this Hon'ble Court to vacate and handover the vacant and peaceful possession of their respective premises/hutments in their possession in the slum plot on or before 1st January, 2007 to Respondent No.5. The Petitioners and Respondent No.4 do hereby confirm that the Respondent No.5 is in possession of the "Slum Plot" with right to develop the same."

2. The First Respondent was a signatory to the Consent Terms and his name appears at Serial No.31 thereto. The First Respondent failed to vacate the premises in his occupation despite

the undertaking. Clause 6 of the Consent Terms required the developer viz. the Petitioner herein to pay an amount aggregating to Rs.1,44,000/- towards compensation payable for a period of 24 months, computed at the rate of Rs.6,000/- per month for transit accommodation. It is undisputed before the Court that the First Respondent has duly accepted the payment of an amount of Rs.1,44,000/- towards the transit accommodation. The contempt proceedings were initiated for breach of the undertaking of the First Respondent. On 8th October, 2007 a notice to show cause was issued by a Learned Single Judge calling upon the First Respondent to explain as to why action should not be taken against him for willful breach of the undertaking given to the Court. On 19th November, 2007 an adjournment was sought for filing a reply which was granted. A reply has been filed by the First Respondent. In paragraph 3 of the reply the defence is that in 1996 the developer had entered into a development agreement with the Sixth Respondent, a co-operative society and in March 1997 MHADA issued a certified list of 132 occupants who were eligible for participation in the redevelopment scheme (Annexure 2). By 2002, 53 slum dwellers had shifted to transit camps. No steps were taken according to the First Respondent by the

developer. The First Respondent does not dispute that he was a party to the writ petition before this Court. However, according to the First Respondent the circumstances in which he put his signature are as follows ;

> "3(f) On 17th October, 2006 at about 10.30 p.m. five persons namely Mr. Jagannath Mejari, Mr. Vinay Walawalkar, Mr. Vijay Patil, Mr. Sanjay Keralkar and Mr. Dhaku Shinde came to my house and told me to sign some paper since the same was required by our lawyer the following day in the pending Writ Petition. I was not shown or informed about there being any settlement or the consent terms. I was asked to sign on a sheet of paper which contained only the signatures of about 30 other members. The consent terms were not appended to the sheet of paper on which my signatures were obtained. I signed the same in good faith since these very persons were liaising with the lawyer. I now find that the said paper on which my signature was obtained has been appended to the consent terms to give the impression that I am a signatory to the consent terms."

3. The First Respondent has stated that he is in the process of filing appropriate proceedings against his earlier advocate; for the discharge of the undertaking contained in the Consent Terms dated 17th October, 2006; and for having the order dated 18th October, 2006 recalled.

4. At the present stage, while it appears on the one hand

that the First Respondent is disputing the circumstances in which he had appended his signatures as a consenting party to the Terms which were placed on the record of this Court, it is an admitted position before the Court that in pursuance of the very same Consent Terms the First Respondent was paid an amount of Rs.1,44,000/-. This amount is under Clause 6 of the Consent Terms payable as compensation for the transit accommodation at the rate of Rs.6,000/- per month for 24 months. The learned counsel states that this amount of Rs.1,44,000/- was in the understanding of the First Respondent payable towards the arrears, but again the learned counsel has fairly stated that even this statement does not find a place in the affidavit in reply. Prima facie, therefore, it is apparent that the First Respondent has taken the benefit of the Consent Terms, but is now attempting to resile therefrom and from the undertaking which was tendered to the Court.

5. However, it is not necessary or appropriate for this Court to make any observation conclusively about the circumstances in which the undertaking was tendered by the First Respondent before the Court. Counsel appearing for the First Respondent

fairly accepts the position that the correct course of action would be for the First Respondent to move appropriate proceedings before the Division Bench for being relieved of the undertaking. No such proceeding admittedly has been instituted until date. In this view of the matter, counsel appearing on behalf of the First Respondent stated that to obviate the passing of any further orders by this Court in the exercise of the contempt jurisdiction, the First Respondent would tender an undertaking to this Court that – (i) the First Respondent shall within a period of four weeks from today, move an application before the Court in Writ Petition 2481 of 2005 for being relieved of the undertaking contained in Clause 5 of the Consent Terms and for such further reliefs as the First Respondent may be advised to pursue; (ii) In the event that no orders are passed on or before 31st March, 2008 by the appropriate Court either relieving the First Respondent of the undertaking or for the protection of the possession of the First Respondent, the First Respondent shall by the aforesaid date viz. 31st March, 2008 hand over peaceful and vacant possession of the premises to the Petitioner.

6. Though I have come to the conclusion that the First

Respondent, prima facie, is guilty of a breach of the undertaking which was submitted to the Court, I have considered it expedient in the interest of justice not to impose any further punishment in view of the undertaking which has been tendered before the Court on behalf of the First Respondent on instructions by the learned counsel. Having regard to the fact that the First Respondent is a slum dweller, it would, in my view, be appropriate, subject to the aforesaid undertaking, if an opportunity is granted to the First Respondent to move an application before the Court in Writ Petition 2481 of 2005. The undertaking tendered before the Court as aforesaid is accepted. The Contempt Petition is accordingly disposed of.

The show cause notice shall accordingly stand disposed of.